

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777 - 6600

Case No. S-245-B

PETITION OF CHEVY CHASE CLUB, INC.

OPINION OF THE BOARD
(Hearing held October 3, 2001)
(Effective date of Opinion: November 1, 2001)

Case No. S-245-B is a petition pursuant to Section 59-G-2.24 of the Zoning Ordinance (Chapter 59, Montgomery County Code 1994, as amended) to modify an existing special exception (S-245-A) for a golf course/country club. This modification seeks to: (1) add a maintenance building to the existing complex of maintenance buildings; and (2) construct a shelter near the center of the subject site.

Decision of the Board: Special exception GRANTED, subject
to conditions enumerated below.

The Board of Appeals held a public hearing on Wednesday, October 3, 2001, pursuant to Section 59-A-4.11(a) of the Zoning Ordinance. Appearing on behalf of the Petitioner were Timothy Dugan, Attorney for Chevy Chase Club, Inc.; James Cromwell, Vice President, Chevy Chase Club, Inc.; Al Blumberg, Planner, Site Solutions, Inc., Bruce Hayes, Architect, Hayes Architects; and James Donnelly, Real Estate Appraiser, J. Lee Donnelly & Son, Inc.

There was no opposition to the requested modification.

EVIDENCE PRESENTED TO THE BOARD:

1. The subject site, consisting of approximately 190 acres, has frontage on, and is bordered by: Wisconsin Avenue, to the west, Connecticut Avenue, to the east, and Bradley Boulevard, to the north. To the south, the subject site is bordered by residential homes that front on various residential streets in Chevy Chase, including: West Melrose Street, West Lenox Street, Hesketh Street, and Cedar Parkway. The main entrance to the site is on Connecticut Avenue, approximately 100 feet south of its

intersection with Bradley Boulevard. The site consists of rolling terrain, many mature trees, and extensive landscaping along its perimeter.

2. The subject site is zoned R-60.

3. Residential properties, zoned R-60, surround the subject site, as described in Section 1. above, except for the corner at the intersection of Wisconsin Avenue and Bradley Boulevard, where the southerly end of the Bethesda Central Business District begins.

4. The Club has been in existence for over a century. Over the past 50 years, the Club has been granted numerous modifications permitting modernization or additions. Most recently, on March 14, 1997, the Board of Appeals approved special exception (S-245-A) to permit the Club to: add an indoor tennis facility for four courts, relocate its platform tennis courts, and provide more parking and landscaping, all in the southeasterly corner of the subject site, near Connecticut Avenue.

The subject modification seeks to add a maintenance building to the existing complex of maintenance buildings located near the tennis center and to add a shelter in the center of the subject site.

5. Mr. James Cromwell, Vice President of Chevy Chase Club, Inc., Mr. Al Blumberg, Planner, Mr. Bruce Hayes, Architect, and Mr. James Donnelly, Appraiser, testified at the public hearing concerning the applicant's petition to: (1) add another maintenance building; and (2) to construct a shelter in the center of the subject site.

The maintenance building would be added to the existing complex of maintenance buildings for two main purposes: (a) to house tractors and other maintenance equipment and to muffle the noise from starting cold engines; and (b) to house a state-of-the-art rinse-water treatment and recycling system, designed to capture, process and render harmless the spillage of rinse-water and other common substances, such as fertilizers, that are washed from or otherwise spill in the course of mixing or loading substances used in maintaining the Club's grounds.

The shelter is to be located in the center of the subject site, approximately 877 feet to the closest property line. The new shelter will have two bathrooms and will replace shelters that, over the years, have been removed for various reasons including their destruction during storms and instability due to decay. There are no shelters today. The shelter is to be constructed within the area of the Club that has not been subdivided already. The applicant is planning to apply for subdivision approval under the minor subdivision process, as provided in the Subdivision Regulations.

6. Mr. Hayes testified that the proposed maintenance building would be constructed of similar building materials as the existing maintenance buildings, with the same palette of colors (Exhibit Nos. 8(b)-8(d) and Exhibit Nos. 5(b)-5(c)). Mr. Hayes

testified that the maintenance building has been designed to minimize the overall size of the structure by utilizing a tee-shaped plan. The plan reduces the width of the building and lowers the overall height of the pitched roof. The height of the eaves also is lower than the existing building eaves to reduce the height of the building. Shed dormers are utilized to accommodate the sectional overhead doors. The use of the residential massing features reduces the perception of scale and bulk.

Mr. Blumberg testified that significant additional new landscaping near the maintenance building is unnecessary, because of the substantial existing landscaping (Exhibit No. 4(b), Exhibit Nos. 6(a)-6(g)), and because the proposed maintenance building would be 333 feet from the closest property line (Exhibit No. 4(a)). Some additional plantings are to be made, as shown on the Site, Landscape and Lighting Plan (Exhibit No. 4(b)).

Mr. Blumberg and Mr. Hayes testified that the maintenance building will be illuminated only with a few, required lighting fixtures above the doors, directed downward (Exhibit No. 12 (lighting standard) and Exhibit No. 5(c) (exterior elevations showing locations of lights)). No lighting will be directed toward the Club's perimeter. The proposed lighting, as shown, would be wall-mounted adjacent to the doors, approximately eight feet above the ground, and would radiate only a small distance, stopping well short of the property line located at least 333 feet away (Exhibit No. 4(a)). Finally, Mr. Blumberg testified that the proposed modification would be compatible, and in harmony with, the surrounding neighborhood.

Mr. Blumberg testified that the maintenance building will be constructed in the area of the Club that has already been subdivided; therefore, a building permit application may be duly applied for and issued following the issuance of the Board of Appeals Opinion granting the modification. The area encompassing the buildings along Connecticut Avenue were included in a subdivision record plat recorded in 1997.¹

7. Mr. Hayes and Mr. Blumberg testified that the proposed shelter would be a short, square, sturdy shelter, with a low roof line, built of natural-looking materials, in keeping with its setting in the center of the vast, open expanse of the Club property (Exhibit No. 5(a)), approximately 877 feet to the closest property line (Exhibit No. 4(a)). No exterior lighting will illuminate the shelter, because it will only be used during daylight.

Mr. Blumberg testified that the shelter will not be visible from the Club's perimeter (Exhibit Nos. 7(a)-7(f)).

Mr. Blumberg testified that the area of the Club where the shelter will be constructed has not been subdivided; therefore, a building permit application may not be duly applied for and issued until after the area has been subdivided. Mr. Blumberg testified that the Club is planning to proceed through the minor subdivision process (Subdivision Regulation 50-35A) for such area of the Club property (Exhibit No. 4(a)).

¹ Plat Book 186, Plat No. 20566, recorded 12/12/97.

8. Mr. Blumberg testified that the proposed application is in conformance with the 1990 Bethesda Chevy Chase Master Plan. At Page 33 of the Master Plan, under Section 3.13 "Large Land Users," it states as follows:

This Master Plan recommends the continued use, within existing zoning, of country clubs, private schools, and other institutions throughout the Planning Area.

...

These properties are recognized as an important private open space resource, particularly in an area which is as largely developed as Bethesda-Chevy Chase.

...

Occasionally, a school or club will construct new facilities or additions which require special exception approval. These should be reviewed on a case-by-case basis to ensure compatibility with area residences and conformance with Plan objectives.

A golf course is allowed by special exception in the R-60 Zone. The Maryland-National Capital Park and Planning (M-NCPPC) Technical Staff found that the requested modification would pose no adverse impacts in association with the Master Plan or the applicant's continued use of the subject site (Exhibit No. 19).

9. Mr. Blumberg testified that the proposed modification would not be detrimental to the surrounding neighborhood, nor would it adversely affect the health, safety, or welfare of anyone on, or around the subject site, or in the surrounding neighborhood.

10. Mr. Blumberg explained that the applicant would comply with the conditions for stormwater management, as required by Montgomery County. Finally, Mr. Blumberg testified that the shelter would be served by adequate public sewer and water and that the proposed modification would not adversely impact the surrounding neighborhood.

11. Mr. Donnelly testified that the proposed additions would not be detrimental to the economic value of surrounding properties or the general neighborhood at the subject site.

12. Mr. Cromwell testified that the Club met with representatives of the Town of Somerset, the Village of Chevy Chase and the Town of Chevy Chase. Further, the Club met with the People's Counsel who visited the subject site to inspect the area for the proposed additions. Mr. Cromwell testified that the Club met with nearby property owners to describe the proposed modification. Mr. Cromwell further testified that he was not aware of any opposition to the application. Finally, Mr. Cromwell testified that the proposed modification would cause no increase in the level of vehicular traffic.

13. The M-NCPPC Technical Staff found that there were no transportation issues associated with the subject application.

14. The M-NCPPC Technical Staff Report indicated that the applicant is not subject to the forest conservation law as the forest conservation requirements for the subject site were previously met. The M-NCPPC Technical Staff Report also indicated that the applicant must submit a tree protection plan along the limits of disturbance for approval by M-NCPPC Environmental Planning Staff prior to release of sediment and erosion control or building permits, as appropriate.

15. The M-NCPPC Technical Staff found that the proposed modification satisfies the general and specific requirements of the Zoning Ordinance (Exhibit No. 19) and recommended approval of the request for modification to special exception, subject to the following conditions:

1. The applicant is bound by all submitted statements and plans.
2. Approval of a tree protection plan by M-NCPPC Environmental Planning Staff prior to the release of sediment and erosion control permit or building permit as appropriate.
3. Compliance with Montgomery County Department of Permitting Services requirements for stormwater management and sediment and erosion control.

FINDINGS OF THE BOARD:

Based on the applicant's binding testimony, the evidence of record and the exhibits presented at the public hearing, the Board concludes that the requested modification can be granted. In reaching this conclusion, the Board reviewed the following sections of the Zoning Ordinance and determined compliance with each section as stated below:

Section 59-G-1.2 Conditions for granting.

59-G-1.21 Standard for evaluation. A special exception must not be granted absent the findings required by the Article. In making these findings, the Board of Appeals . . . must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics

of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.

In accordance with Section 59-G-1.21, the Board finds that the inherent physical and operational characteristics of the proposed use are the size, bulk, noise, lighting, and landscaping of the two proposed additions. Because the two proposed additions are intended to facilitate the existing use of the subject site, there is not expected to be any significant increase in noise or lighting associated with the site as a result of the two proposed additions. The Board finds that the size and bulk of the proposed structures are in keeping with the character of the existing use and the site's topography and landscaping will screen the views of the modifications from Connecticut Avenue, Wisconsin Avenue, Bradley Boulevard, and the adjoining residential area to the south.

The maintenance building will be constructed of similar building materials, and will be the same color, as the existing buildings in the maintenance complex. The applicant proposes to use low wattage, wall-mounted lights near the doors, the only lighting proposed under the modification.

The shelter will be only 12 ½ feet high and located in the center of the subject site, approximately 877 feet to the closest property line. It is not expected to be visible from the subject site's perimeter. It will be built of natural-looking materials, which is in keeping with its setting in the vast, open expanse of the Club property. No exterior lighting will illuminate the shelter, because it will only be used during daylight.

The Board finds that there are no non-inherent effects related to this modification that would warrant denial of the application.

Section 59-G-1.21 General Conditions.

(a) A special exception may be granted when the Board finds from a preponderance of the evidence of record that the proposed use:

- (1) Is a permissible special exception in the zone.

The Board finds that the proposed additions are permissible modifications in the R-60 Zone, in accordance with Section 59-G-1.21(a)(1) of the Zoning Ordinance.

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

The Board finds that the proposed modification satisfies the standards and requirements for a golf course and country club under Section 59-G-2.24, in accordance with Section 59-G 1.21(a)(2) of the Zoning Ordinance.

(3) Will be consistent with the general plan for the physical development of the District, including any master plan thereof adopted by the Commission. Any decision to grant or deny a special exception must be consistent with a recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that the granting of a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

The Board finds that the subject site is covered by the 1990 Bethesda Chevy Chase Master Plan. The Master Plan supports the existing R-60 Zone for the subject site and the subject modification is permitted by special exception in such zone, in accordance with Section 59-G-1.21(a)(3) of the Zoning Ordinance.

(4) Will be in harmony with the general character of the neighborhood considering population density, design, scale, and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.

The Board finds that the proposed modification will be in harmony with the general character of the neighborhood considering population density, design, scale, and bulk of the proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses, in accordance with Section 59-G-1.21(a)(4) of the Zoning Ordinance.

(5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site irrespective of any adverse effects the use might have if established elsewhere in the zone.

The Board finds that the proposed modification will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood, in accordance with Section 59-G-1.21(a)(5) of the Zoning Ordinance.

(6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The Board finds that the proposed modification will cause no objectionable noise, vibrations, fumes, odors, dust, glare or physical activity in accordance with Section 59-G-1.21(a)(6) of the Zoning Ordinance.

(7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number,

intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

The Board finds that the proposed modification will not, when evaluated in conjunction with existing and approved special exceptions in the neighboring one-family residential area, increase the number, intensity or scope of special exception uses sufficiently to affect the area adversely or alter its predominantly residential nature, in accordance with Section 59-G 1.21(a)(7) of the Zoning Ordinance.

(8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The Board finds that the proposed modification will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area, in accordance with Section 59-G-1.21(a)(8) of the Zoning Ordinance.

(9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

The Board finds that the proposed modification will be served by adequate public services and facilities, in accordance with Section 59-G-1.21(a)(9) of the Zoning Ordinance.

(i) If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.

The Board finds that with respect to the maintenance building addition, which is to be constructed in the area of the Club already subdivided, such requested modification will not require approval of a preliminary plan of subdivision, in accordance with Section 59-G-1.21(a)(9)(i) of the Zoning Ordinance.

The Board finds that with respect to the shelter, which is to be located in the area of the Club not already subdivided, such requested modification will require approval of a preliminary plan of subdivision, in accordance with Section 59-G-1.21(a)(9)(i) of the Zoning Ordinance. The Board understands that the applicant is planning to proceed through the minor subdivision process under Section 50-35A of the Subdivision Regulations.

(ii) With regard to findings related to public roads, the Board . . . must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.

The Board finds that there is no increase in vehicular traffic or internal traffic patterns associated with this requested modification and thus no detrimental effect to pedestrian and vehicular safety will result, in accordance with Section 59-G-1.21(a)(9)(ii).

Section 59-G-2.24 Golf Courses and Country Clubs

The Board may authorize a golf course, country club, private club or service organization including community buildings, upon a finding that the proposed use will not adversely affect surrounding residential and agricultural uses because of noise, traffic, number of people or type of physical activity; provided, that the following standards and requirements can be met:

(a) The provision of food, refreshments, and entertainment for club or organization members and their guests may be allowed in connection with such use, provided the availability of such services is not reasonably expected to draw an excessive amount of traffic through local residential lots.

In accordance with Section 59-G-2.24(a), the Board finds that the proposed modifications add a maintenance building to the existing complex of maintenance buildings and a shelter in the center of the subject site. The Board finds that, because no food, refreshments or entertainment will be associated with them, the maintenance building and the shelter will not draw excessive amounts of traffic through local residential streets.

(b) All buildings shall conform to the height, coverage, and setback regulations of the zone in which they are located; and all facilities shall be located as to conform to other special exception standards.

In accordance with Section 59-G-2.24(b), the Board finds that the proposed buildings will be constructed on property that is zoned R-60. The requested additions will meet the height, coverage, and setback requirements of the R-60 Zone. The R-60 height limit is 25 feet. The proposed maintenance building will be approximately 18 feet six inches in height. The proposed shelter will be approximately 12 feet six inches in height. Net lot area coverage in the R-60 Zone is 35%; net lot area coverage for all existing and proposed buildings on site will be well below 35%. In the R-60 Zone, the setback from a lot line for an accessory building is 25 feet and the proposed maintenance building will be setback at least 35 feet from the internal lot line of the Club's property and at least 333 feet to the closest lot line of the homes bordering the Club's perimeter. Further, the shelter will be 877 feet from the closest lot line of the homes bordering the Club's perimeter.

(c) All outdoor lighting shall be located, shielded, landscaped or otherwise buffered so that no direct light shall constitute an intrusion into any residential area.

In accordance with Section 59-G-2.24(c), the Board finds that the proposed maintenance building will only have lights attached to the building above the doorways, as required by the applicable building code. Moreover, the applicant has submitted a conceptual landscape plan for the proposed maintenance building. M-NCPPC Technical Staff has reviewed the conceptual landscape plan and found it to be acceptable. Because of the minimal additional landscaping and lighting approved, the applicant is not required to submit a final landscape and lighting plan for approval by M-NCPPC Technical Staff, prior to issuance of building permits. Further, the Board finds that the proposed shelter will have no exterior lights because it will only be used during daylight hours and no new landscaping is required for the shelter.

Therefore, based on the foregoing, the Board GRANTS the requested modification to special exception, subject to the following conditions:

1. The Applicant is bound by all of its testimony and exhibits of record and the testimony of its witnesses, to the extent that such testimony and representations are identified in the Board's opinion granting the modification.
2. All terms and conditions of the approved special exception remain in full force and effect.
3. For the maintenance building:
 - a. Approval of a tree protection plan by M-NCPPC Environmental Planning Staff prior to release of sediment and erosion control permit or building permit, as appropriate.
 - b. Landscape and lighting as shown on: Exhibit No.4(b) (landscape plan); Exhibit No. 5(c) (elevation showing wall-mounted light locations above certain doors on the maintenance building), Exhibit No.12 (wall-mounted lighting standard). No further approval of landscape or lighting required by M-NCPPC Technical Staff prior to issuance of building permits for maintenance building.
 - c. Compliance with Montgomery County Department of Permitting Services requirements for stormwater management and sediment and erosion control.
4. For the shelter:
 - a. Approval of a tree protection plan by M-NCPPC Environmental Planning Staff prior to release of sediment and erosion control permit or building permit, as appropriate.
 - b. Compliance with Montgomery County Department of Permitting Services requirements for stormwater management and sediment and erosion control.
 - c. Compliance with the requirements of Chapter 50, Subdivision Regulations.

On a motion by Allison I. Fultz, seconded by Louise L. Mayer, with Donald H. Spence, Jr., Chairman, and Angelo M. Caputo in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled case.

Board member Donna Barron was necessarily absent and did not participate in the hearing and the Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 1st day of November, 2001.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and any party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four month period within which the special exception granted by the Board must be exercised.

See Section 59-A-3.2 of the Zoning Ordinance regarding Use and Occupancy Permit for a Special Exception.